

PETER LIONBERGER.

[To accompany bill H. R. No. 429.]

MAY 25, 1842.

Mr. COWEN, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to whom was referred the petition of Peter Lionberger, report:

That the petitioner represents that, in the fall of 1812, "he was a farmer, residing in the "county of Licking," in the State of Ohio; "that, after the surrender of Detroit by General Hull, there was a draft of Ohio militiamen, as petitioner understood at the time, by order of an officer by the name of Lynch. Major Anthony Pitzer, of said county, commanded the regiment to which" the "petitioner belonged. A company was drafted from said regiment to perform a tour of six months, and amongst others" the "petitioner. After the draft was made, and" the "petitioner was about to repair to Newark, the place of rendezvous, Major Pitzer called upon" the "petitioner, and stated that a baggage wagon must be had for the company, and requested petitioner to furnish his team and waggon. Petitioner absolutely refused to do so. His team was a first rate one, and he could not spare it from his farm. Whereupon Major Pitzer informed" him "that he was authorized by law to press the team into the service, and must do so, it being the stoutest and best team in the neighborhood; he at the same time assured" "petitioner that he would be paid by the Government for any damage which the team might sustain whilst in the service." "Finding that he would be compelled to let his team go," he "yielded to the urgent entreaties of Major Pitzer, and, though greatly to his disadvantage, he geared up and drove into Newark, the place of rendezvous;" that his team was appraised at Newark, and he started from there early in October, 1812; that, before the company to which he was attached "joined the main army, the winter had broken up, and the black swamp was almost impassable—his team was again and again mired down, and had to be prised out;" that this hard usage and scarcity of feed soon destroyed petitioner's fine team;" that, a few weeks after he joined the army, his best horse, which had been appraised at \$120, dropped dead in his gears." He represents that his other horses were much reduced before he got home, and two of his three remaining horses died shortly after he got home; that he sought compensation at an early day, and for that purpose obtained a copy of the record of appraisement of his team from the book of the quartermaster, where it was recorded. This he lost before obtaining relief, and did not find it until recently. Sup-

posing this copy necessary to his success, he has delayed application to Congress until it was found. The circumstances of the loss and finding this copy, which is attached to the petition, are detailed in the statement of the Hon. J. Mathiot, herewith published. The deposition of Major Pitzer, taken in 1841, confirms the material allegations of the petitioner as to his entry into the service with his team, and the description and condition of his horses. Henry Alexander, who says he was four months with petitioner in the service, testifies that one of petitioner's horses died while in the service—that he took good care of his horses. He says the petitioner's team was "considered the second best in the regiment;" and when the petitioner got home, the witness considered it not worth ten dollars. Joseph Beard knew the team. He says the petitioner returned with three of his horses in March, 1813. One of the horses was not brought back: two of them died shortly after his return, and the witness thinks their death was caused by the hardships they endured in the service. These depositions were all taken in 1841, and are printed with this report.

It will be noticed that this testimony has all been taken recently. The very equivocal paper attached to the petition has the appearance of antiquity. It is headed "Appraisement of Peter Lionberger;" is certified to be "A copy from the quartermaster's books, dated January 13, 1813," and the name of H. Glenn subscribed. The property scheduled consists of four horses, a wagon and gears, &c. No names are given as appraisers. The committee do not usually attach implicit credit to oral testimony, given so great a length of time, as the testimony in this case was, after the occurrences of which the witnesses speak. Witnesses of the most scrupulous regard for truth may greatly err from defect of memory. Information relative to the claim has been sought and some obtained from the Treasury Department. From the Third Auditor we learn that it appears, by papers on file in his office, that one Peter Lionberger was paid, as a private in a company commanded by Captain Saffon, of a regiment of which Charles Miller, first as major and afterwards as lieutenant colonel, was commanding officer, at the rate of \$6 66 per month, from 30th September, 1812, to 7th April, 1813. Opposite his name, on the earliest muster, this remark appears: "On duty as wagoner." It further appears, from vouchers in the office of the Third Auditor, that Peter Lionberger was paid for fifty-eight days' hauling for the northwestern army, from 3d October to 3d November; six days, the receipt for which is dated December 7; and seventy-nine days, from December 9, 1812, to February 25, 1813: the price paid was three dollars per day—total \$429. The records of the commissioner who administered the law of April 9, 1816, show that, on the 23d of February, 1818, he awarded one hundred dollars to Peter Lionberger for the loss of a horse. The papers relative to this and thirty-two other claims, which appear to have been presented by Cyrus Hubbard, as attorney, cannot be found, and the claim of the petitioner does not appear to have been paid.

These facts the committee regard as corroborative of the testimony accompanying the petition. They reduce to certainty the fact of service, and very satisfactorily show that he lost one of his horses while in the service. Whether that loss resulted from fault or negligence of his, and, if it did not, whether it resulted from the failure of the United States to furnish sufficient forage, are questions to be answered before this claim can be allowed. Witness (Alexander) says the petitioner took good care

of his horses. The fact that his team was in fine order when he entered the service is as well shown as it can be by parol evidence after so great a lapse of time. If this be admitted, the presumption is strong that he who kept his horses in good condition at home would do the same thing when in the employ of others, if sufficient forage was supplied. The insufficiency of forage is not improbable, considering the country through which the petitioner passed, and the evidence derived from history of the privations and hardships of the campaign of 1812 and 1813 in that section of country. Two of the three horses that lived to reach home died soon afterwards.

Take all the circumstances—the allowance of the claim by the commissioner under the law of 1816, the testimony of Major Pitzer, Alexander, and Beard, the fact of the petitioner having so long and constantly had his claim upon his mind, as shown by the statement of the Hon. J. Mathiot, and the proof in the office of the Third Auditor—and the committee are satisfied that the petitioner lost a horse by death, while it was engaged in the military service of the United States, without fault or negligence on his part, and in consequence of the failure of the United States to furnish sufficient forage. The claim for one horse—that one which died while in the service—is supposed to come within the provisions of the third section of the act of April 9, 1816. That section only provides for payment for horses which die while in the service. The committee adopt the estimate placed upon the horse by the commissioner. The paper which purports to be an appraisement of the team does not correspond in price with the value placed on the horse by the commissioner. The prices on that paper are, \$85, \$75, \$120, and \$90. If, as the petitioner alleges, it was his best horse that died, deduction may have been made, as the law of 1816 required, for payment for services of the horse after his death. A lower value, too, might have been placed upon the same horse by the commissioner. A bill appropriating one hundred dollars for the relief of the petitioner is herewith reported.

THE STATE OF OHIO, *Licking county*, ss :

Before me, the subscriber, an acting justice of the peace within and for said county, personally came Major Anthony Pitzer, of lawful age, and a resident of said Licking county, who, being duly sworn according to law, deposeth and saith, that he was the commandant of a regiment of militia in the said county of Licking, with a commission of major, and being the highest officer then in command. After the surrender of General Hull, affiant received orders from General Lynch for a draft of militia from his regiment: the draft was made, and, amongst others, Peter Lionberger, then and still a resident of said Licking county, was drafted. Captain Joseph Sutton commanded the company of drafted men; and it being necessary that said company should be furnished with a baggage wagon, affiant called upon said Lionberger, who was the owner of an excellent team, and induced him to let it go, assuring him that, if any of his horses died in the service, he would be paid for them. The said Lionberger did let his team go, which consisted of four very large, stout horses, which were in excellent order when they started; one of them was an iron gray.

Affiant ordered said horses, wagon, and all the apparatus, to be appraised, and directed said Lionberger to report his said team when he reached

the place of rendezvous. Affiant was present at Newark, from which point said company marched; affiant thinks it was some time in the month of September, 1812. Affiant states that he observed said team particularly when it started; the horses were in fine plight.

In the month of February following, affiant was called upon to take command of a battalion of Ohio militia, which had been drafted to join the northwestern army. Affiant left Newark about the 27th of February, 1813; and, near Columbus, affiant met the said Peter Lionberger coming back with his team: the horses looked most miserable, poor, and jaded, and worn out—the team which, a few months before, was in such beautiful plight, appeared to be all gone to wreck. Affiant did not return to said Licking county until the fall of 1813; and when he did return he learned that two of said horses died shortly after their return, and one of them had died in the army.

Affiant has no knowledge of said Peter Lionberger ever receiving from the Government any compensation for said horses. Affiant has lived a neighbor to said Lionberger for the last thirty years, and he has made repeated applications to affiant to assist him in obtaining from the Government a compensation for the loss of said horses. And further affiant saith not.

ANTHONY PITZER.

Sworn to and subscribed before me this 10th day of November, 1841.

G. BRADY, J. P.

STATE OF OHIO, *Licking county*, ss :

Personally appeared before me, Samuel Patterson, a justice of the peace in and for Licking county, Henry Alexander, and was duly sworn, depose and saith that, in the fall of 1812, Peter Lionberger's team was taken into service of the United States of America, as a baggage wagon, under the control of Captain Joseph Sutton. The deponent saith the said team was considered the second best in the regiment when it was taken into the service; and deponent says, when the service was over, the wagon and horses were considered by me not to be worth ten dollars when said Lionberger got home; and one horse died in the service. I, the deponent, was with said Lionberger about four months, with a team, in service; and I considered that the said Lionberger took as good care of his team and wagon as he could, under the same circumstances. And further this deponent saith not.

his

HENRY X ALEXANDER.

mark.

Sworn to and subscribed before me this 9th day of November, 1841.

SAMUEL PATTERSON, J. P.

THE STATE OF OHIO, *Licking county*, ss :

Before me, the subscriber, an acting justice of the peace within and for said county, personally appeared Joseph Beard, of lawful age, and a resi-

dent of said Licking county, who, being duly sworn according to law, deposeth and saith, that he is intimately acquainted with Peter Lionberger, also a resident of said Licking county, and has been acquainted with him for the last thirty years. Affiant distinctly recollects that, in the year 1812, the said Peter Lionberger was drafted to perform a tour of duty in the Ohio militia; Major Anthony Pitzer was the officer who had the command. After the said draft was made, the said Pitzer, as such commanding officer pressed into the service of the United States a wagon and team, consisting of four horses, with gears and necessary equipments, belonging to the said Lionberger. Affiant cannot now state the color of all the horses; he knows that one of them was a grey. The said horses were in good plight at the time they left for the northwestern army. It was in the fall of the year 1812 when the team started; and the said Lionberger returned with a part of said team in the month of March, 1813. One of the horses was not brought back, but died, as affiant was informed, some time during the winter in the service of the United States. The three horses that were brought back were in a most miserable condition, poor and worn out. Said Lionberger was a good horse doctor, and a careful hand with horses. Two of the horses that Lionberger brought back from the army with him, and which had been pressed the fall before, as above stated, died shortly after his return; and affiant has no doubt but that their death was caused by the hardships they endured the winter before, while in the service of the United States. The iron grey horse recovered after said Lionberger had doctored him for some time.

Affiant is satisfied that said Lionberger has never received any compensation from the United States for the loss of said horses. And further affiant saith not.

JOSEPH BEARD.

Sworn to and subscribed before me this 10th day of November, A. D' 1841.

G. BRADY, J. P.

I do hereby certify that, in the fall of 1816, I became acquainted with Peter Lionberger, of Licking county, Ohio. The first time I saw Lionberger he was in conversation with Major Anthony Pitzer, in relation to a claim which he (Lionberger) had on the Government for a team which had been pressed into the service during the late war, and which, from hard service and want of forage, had been so injured that several of the horses died. Lionberger wanted Pitzer to pay him for the team, as he had pressed it. Pitzer said he had no doubt the Government would allow the claim, as it was a just one, and that he had already written to Washington city on the subject. Some two or three years afterwards, I was present at the clerk's office in Newark, when Lionberger and Pitzer called upon Amos H. Coffee, Esq., in relation to this claim. I then understood that Pitzer had placed in Coffee's hands the appraisement of Lionberger's team, for the purpose of obtaining the amount of the claim. I recollect that Coffee then looked for the paper; it was not found; and he was under the impression at that time that he had placed it in the hands of General Philemon Beecher, who represented the district in Congress at that time. It was afterwards ascertained that General Beecher had not the paper.

Mr. Coffee was at the time, and for many years afterwards, clerk of the

court, and I wrote in his office. I knew that Lionberger, as well as Major Pitzer, called frequently on the subject. Diligent search was made for the paper, but it could not be found. It was supposed to be the original appraisal, and it was believed that the claim could not be established without it. I recollect that Lionberger applied to Judge Wilson, after his election to Congress, to endeavor to obtain this claim. Nothing could be done for want of the lost paper. Last spring, shortly before the commencement of the extra session, Lionberger called upon me in order, as he said, to make a last effort to obtain pay from the Government for his horses. I went with him to Mr. Coffee, and another thorough search was made for the paper; still it could not be found. Mr. Coffee was under the impression that it must be in one of the Departments in Washington. During the extra session, I caused examinations to be made in several of the offices in this city, but the paper could not be found. After my return home from the extra session, and some time in the month of October last, Mr. Coffee called at my office with the paper which is annexed to the petition in this case, and stated that he had just found it in an old file of papers that he had not examined for years, and that it was the same paper which had been placed in his hands by Major Pitzer.

Peter Lionberger, the petitioner, is an honest man; he is now poor; and, from what I know of the transaction, I have no doubt his claim is a just one.

J. MATHIAS.

WASHINGTON CITY, April 4, 1842.

JOSEPH BECKARD.

G. BRADY, A. P.

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